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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment to the Commission's Rules)
and Policies Pertaining To a Mobile) CC Docket No. 92-166
Satellite Service in the 1610-1626.5)
/2483.5-2500 MHz Frequency Bands)
)

PETITION FOR RECONSIDERATION
OF
CONSTELLATION COMMUNICATIONS, INC.

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November 21, 1994

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SUMMARY

Constellation Communications, Inc. ("Constellation") is one of the five original applicants for a low-Earth orbit ("LEO") satellite system in the 1.6/2.4 GHz Mobile-Satellite Service ("MSS"). Constellation recently filed its amendment on November 16, 1994 demonstrating that it is fully qualified to immediately receive a 1.6/2.4 GHz MSS system blanket authorization.

In this petition, Constellation requests the Commission to reconsider its decision not to disqualify the AMSC Subsidiary Corporation ("AMSC") from holding such a license. Although the Commission restricted the 1.6/2.4 GHz MSS to non-geostationary satellites, the Commission never addressed Constellation's argument that AMSC should be deemed ineligible to hold a 1.6/2.4 GHz MSS license because it is the sole MSS license in 30 MHz of spectrum and is implementing its geostationary MSS system with the capability of using a total of 63 MHz of spectrum. Constellation believes it is contrary to Commission policy prohibiting spectrum warehousing to assign AMSC another 33 MHz of spectrum in the 1.6/2.4 GHz MSS bands before it has launched a single satellite or has factually demonstrated any need for additional spectrum.

Constellation also requests reconsideration of certain other rules governing the 1.6/2.4 GHz MSS. These areas include space station application and license procedures, Earth station licensing and interservice sharing.

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PETITION FOR RECONSIDERATION

Constellation Communications, Inc. ("CCI"), by its attorneys, submits this Petition For Reconsideration of the Report and Order in CC Docket No. 92-166, FCC 94-261, released October 14, 1994 issued in the above-captioned proceeding.^{1/}

I. INTRODUCTION

Constellation is one of the five companies that filed an application to construct a low-Earth orbit ("LEO") satellite system in the 1610-1626.5 and 2483.5-2500 MHz bands prior to the June 3, 1991 cut-off date. On November 16, 1994 Constellation submitted to the Commission an "Amendment And Application For Launch Authorization And License" providing detailed information describing its plans for implementing its proposed LEO system. In the Amendment, Constellation describes its financial and strategic partners as well as certain minor modifications to its technical program. Now that this proceeding is drawing to a close, Constellation believes that it is important that the

^{1/} Hereafter referred to as "Report and Order."

Commission review several aspects of its Report and Order so that the regulatory framework for the mobile-satellite service ("MSS") in the 1610-1626.5/2483.5-2500 MHz ("1.6/2.4 GHz") bands allows the licensees to proceed in an efficient and effective manner. In this Petition, Constellation seeks reconsideration of several aspects of the Report and Order, including legal qualifications, application processing procedures, Earth station licensing and interservice sharing rules.

II. DISCUSSION

A. Legal Qualifications.

Constellation argued that use of the 1.6/2.4 GHz MSS bands should be limited to non-geostationary systems,^{2/} and that use of the 1.6/2.4 GHz MSS bands should be limited to new entrants.^{3/} These arguments focussed on the proposal of the AMSC Subsidiary Corporation ("AMSC") to add the 1.6/2.4 GHz MSS bands to its currently authorized geostationary MSS system. The Commission addressed this first point in adopting § 25.143(b)(2)(i) of the rules. However, the Commission is silent on Constellation's second point regarding new entrants in the Report and Order, and simply states that there are six applicants in the current 1.6/2.4 GHz MSS cut-off group.^{4/}

^{2/} Comments of Constellation at 15-16 ("Comments"); Reply Comments of Constellation at 7-9 ("Reply Comments").

^{3/} Comments at 16-18; Reply Comments at 10-11.

^{4/} See, e.g., Report and Order at ¶ 2.

Constellation believes that the Commission must address this issue on reconsideration, particularly in light of the Commission's longstanding policies prohibiting spectrum warehousing and limiting satellite licensees in the amount of additional spectrum/orbit resources they can request at any one time.^{5/} AMSC is currently assigned 33 MHz of spectrum at 1545-1559 MHz and 1645.5-1660.5 MHz as the sole MSS licensee in the United States^{6/} and is constructing its satellites with the capability to access another 28 MHz of spectrum at 1530-1544 MHz and 1626.5-1645.5 MHz.^{7/} This amount of spectrum is far more than the amount of spectrum that must be shared by the five initial LEO applicants.

Constellation believes that as long as AMSC is the sole MSS licensee in the upper MSS L-band, it should be precluded from holding a license in the 1.6/2.4 GHz MSS.^{8/} AMSC has yet to make a factual showing that it has fully utilized its assigned

^{5/} See, e.g., 47 CFR § 25.140(g).

^{6/} See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989), AMSC Subsidiary Corporation, 8 FCC Rcd 4040 (1993).

^{7/} AMSC Subsidiary Corporation, supra. File No. 7/8/9-DSS-MP/ML-90. Although AMSC was also apparently granted a § 319(d) waiver, AMSC's application has been accepted. Moreover, these latter bands are subject to a freeze with respect to the filing of competing applications. Id. at ¶ 42.

^{8/} In a cover letter to the amended application of AMSC Subsidiary Corporation, filed November 16, 1994, AMSC states, "By submitting this amendment, AMSC is showing its interest in remaining in the current processing group for the frequency bands at issue. At the same time, AMSC will continue in the alternative to try to convince the Commission to permit AMSC to access at least a portion of the bands as part of AMSC's domestic geostationary system."

spectrum and that customer demand requires that additional spectrum should be assigned to it. Moreover, if AMSC were to make such a showing and the Commission found it justified, the Commission should first act on AMSC's pending application for access to the lower MSS L-band and establish rules in the longstanding proceeding concerning those bands.

For these reasons, Constellation urges the Commission to reconsider its decision to include AMSC in the current 1.6/2.4 GHz MSS cut-off group and to declare AMSC legally ineligible^{9/} to hold such a license for the reasons set forth above.^{10/}

B. Space Station Application And License Procedures.

Constellation offered a number of proposals for changes to the Commission's rules regarding the procedures governing space station applications and license renewals. After reviewing the Report and Order, Constellation believes there are a number of areas where further improvement or clarification is desirable,

^{9/} It is clear that the Commission has the legal authority to restrict AMSC's eligibility to hold a 1.6/2.4 GHz MSS license. See United States v. Storer Broadcasting Co., 351 U.S. 199 (1956).

^{10/} The decision of AMSC to defer its financial qualifications, together with the lack of specificity in the Report and Order as to the procedures the Commission would follow in resolving any mutual exclusivity remaining among those applicants not receiving authorizations by the planned January 31, 1995 date, is likely to create difficulties and uncertainties for those applicants who have satisfied all of the Commission's requirements with their November 16, 1994 amendments. For instance, what is the role of AMSC in any inter-system coordination conducted between January 1995 and January 1996? It would be desirable for the Commission to clarify its procedures for this interim period when it acts on the pending applications or petitions for reconsideration of the Report and Order.

particularly with respect to the procedures for considering proposals for changes to a system during the system authorization license term and for the handling of applications for license renewal (or "space station replacement authorization" per § 25.120(e)).

Constellation initially objected to the use of the term "technically identical" in §§25.143(a) and (c).^{11/} The Commission has alleviated many of Constellation's concerns over the use of the term "technically identical."^{12/} However, Constellation requests the Commission to further clarify the interpretation of this term and remove ambiguity by explicitly confirming that satellites are technically identical if they do not require a modification of station license pursuant to § 25.117(a) of the rules.

The Commission indicates that "[a]ny spares or replacements that do not fall under the blanket authorization will need separate authorizations to build, launch and operate, but their terms will expire concurrently with the blanket authorization."^{13/} However, the Commission also states that "[a]ny modification application to upgrade satellite design will not be unduly burdensome . . ."^{14/} Given the likelihood that

^{11/} See Comments at 61-62 and Appendix A at 2-3.

^{12/} Report and Order at ¶ 183 and n.250 gives some particular examples but does not appear to cover all possibilities.

^{13/} Report and Order at ¶ 182.

^{14/} Id. at 183.

modifications are likely during the term of the system authorization, there are several areas where clarification is desirable.

First, the Commission should clarify that "technically identical replacement satellites" may replace either "operational" or "in-orbit spares" under § 25.143(c). This is to make certain that after an in-orbit spare is used to replace a failed operational satellite, the licensee can replace the in-orbit spare under § 25.143(c)(1) without first filing an application.

Second, the Commission should clarify that modifications to the blanket system authorization can include changes in technical parameters, antenna beam configuration, orbital parameters, or number of satellites, and that such modifications would be handled as modification applications under § 25.117 rather than a new blanket system license application under §§ 25.114 and 25.143. There are two aspects to be addressed in this regard. The first concerns the amount of filing fees if the modification request is treated as a request for "authority to instruct launch and operate" compared to a request for "license modification." Specifically, Constellation requests that the Commission explicitly clarify that such an application will be treated as a simple modification application.^{15/} But more importantly, the Commission should clarify that such a modification application

^{15/} The appropriate fee is that specified for item 17d in the current Commission Common Carrier Services Fee Filing Guide. See 47 CFR § 1.1105.

does not provide the opportunity for the filing of competing applications by new system operators. Such rights should accrue only if the modification application proposes to use frequencies outside the 1610-1626.5 MHz and 2483.5-2500 MHz band by the initial CDMA system licenses and 1613.8-1626.5 MHz by the initial FDMA/TDMA system licenses.^{16/} Otherwise, modification applications should be considered only with respect to the potential of the proposed changes to create harmful interference to other existing licenses in the bands.^{17/}

As presently written, § 25.120(e) of the rules allows for the filing of a license renewal application only during the 60-day period that occurs between 90 and 30 days prior to the end of the seventh year of the existing license. However, the license term begins on the day the licensee certifies that its first satellite has been placed into orbit and that its operation conforms to the system authorization. See § 25.120(d)(2). Since the initial launch dates of each 1.6/2.4 GHz MSS system are likely to be different and spaced over a period of months, or even years, it is quite likely that the license renewal filing windows of different systems will not overlap. Constellation has previously identified certain difficulties that might arise from this precise rule formulation.^{18/}

^{16/} A similar concern might arise with respect to feeder links but can be addressed at the time final feeder link frequency allocations are adopted.

^{17/} See GE American Communications, Inc. 3 FCC Rcd 6871 (1988).

^{18/} See Comments at 63-64.

As recognized by the Commission, MSS LEO systems require large investments and continuing replenishment and upgrading of satellites during the 10-year license term if they are to provide the most cost-effective, technologically advanced services to the public in a competitive market. Although the Commission's discussion of replacement expectancy^{19/} provides some degree of assurance to 1.6/2.4 GHz MSS operators, Constellation does not believe that the Commission has adequately addressed all of the issues involved.^{20/}

In particular, the Commission did not explain how it will process renewal applications vis-a-vis any applications for new systems. For example, § 25.120(e) is satisfactory if system authorization renewal applications were to be treated independently of any application for a new system under the Commission's replacement expectancy policy. However, if an application for a new 1.6/2.4 GHz MSS system is to be afforded comparative consideration with renewal applications, § 25.120(e) as it is currently written could prevent an existing 1.6/2.4 GHz

^{19/} Report and Order at ¶ 187.

^{20/} The Commission's statement that "international agreements or changes in technology may affect our determination as to whether a replacement system would serve the public interest" is troubling. Report and Order at 187. While such intervening events may affect the technical conditions under which replacement satellites might have to operate (or specific orbital locations available for assignment to particular geostationary satellites), it is not apparent how an international agreement or changing technology could justify the complete denial of a renewal application.

MSS system from filing a renewal application in response to a cut-off notice without a waiver of this rule.

To avoid any such confusion, Constellation proposed the following change to § 25.120(c):

(e) Renewal of licenses. Applications for renewals of earth station license must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days, and no later than 30 days, before the expiration date of the license. Applications for space station system replacement authorization for non-geostationary orbit satellites shall be filed no earlier than 90 days, and no later than 30 days, prior to the end of the seventh year of the existing license term, or at an earlier date if required to be filed by a cut-off date specified by the Commission with respect to a potentially mutually exclusive satellite system application or renewal.^{21/}

Constellation believes that this modification still maintains the concept of the filing window, but clarifies the situation should the Commission decide to issue a cut-off order in response to proposals for new 1.6/2.4 GHz MSS systems that might be filed in competition to the filing of renewal applications by the initial licensees.

C. Earth Station Licensing

There are a number of minor points that Constellation believes require clarification or correction.

Constellation proposed changes to §§ 25.203(j)-(k) because the Commission's rules extended the scope of these provision beyond the intent of the "Report of the MSS Above 1 GHz

^{21/} Comments, Appendix A at 1.

Negotiated Rulemaking Committee" dated April 6, 1993 ("NRM Report"). With respect to § 25.203(j), Constellation proposed:

(j) Applicants for non-geostationary 1.6/2.4 GHz Mobile-Satellite Service / radiodetermination satellite service feeder links ~~outside the bands specified in § 25.202(a)(5)~~ in the bands 18.8-20.2 GHz and 27.5-30.0 GHz shall indicate the frequencies and spacecraft antenna gain contours towards each feeder-link earth station location and will coordinate with licensees of other fixed-satellite service and terrestrial-service systems sharing the band to determine geographic protection areas around each non-geostationary mobile-satellite service / radiodetermination satellite service feeder link earth station.

Reason: To conform text to the recommendation of § 5.1.3(e) of the NRM Report since this information is only relevant to space stations operating Ka-band feeder links with steerable, narrow beam antennas.^{22/}

This subsection was proposed by applicants proposing to use Ka-band feeder links as a way of sharing the band with other users. This provision is unique to Ka-band where the applicants propose to use narrow feeder link spot beams, each of which is dynamically steered on board the satellite to point at a specific feeder link Earth station location. However, this type of coordination is not feasible and was never intended to be applied to LEO MSS systems operating with Earth coverage feeder link antenna beams at frequencies below Ka-band. Constellation, therefore, requests the Commission to reconsider their rule and adopt the version of the rules proposed by Constellation.

With respect to § 25.203(k), Constellation proposed:

(k) An applicant for ~~a non-geostationary space station or~~ an earth station that will operate with a

^{22/} Comments at 65-66 and Appendix A at 4.

geostationary satellite or non-geostationary satellite in a shared frequency band in which the non-geostationary system is (or is proposed to be) licensed for feeder links, shall demonstrate in its application that its proposed ~~space-or~~ earth station will not cause unacceptable interference to any other satellite network that is authorized to operate in the same frequency band, or certify that the operations of its ~~space-or~~ earth station shall conform to established coordination agreements between the operator(s) of the space station(s) with which the earth station is to communicate and the operator(s) of any other space station licensed to use the band.

Reason: To conform text to the recommendation of § 5.1.3(f) of the NRM Report because it is confusing to include a space station requirement in a rule section that deals only with earth stations and because this requirement is already covered by this proposed § 25.278.^{23/}

Again, the intent of § 25.203(k) was to insure that feeder link Earth stations would comply with inter-system agreements reached by the space station system licensee. Section § 25.203 is generally concerned with the obligation of Earth station applicants to select sites and frequencies that do not cause harmful or impermissible interference to terrestrial services. It is inappropriate and confusing to place an obligation on a space station applicant in this section, particularly since the relevant space station obligation is already contained in § 25.278 as a coordination requirement. Constellation requests the Commission to reconsider this proposal and modify § 25.203(k) to simply recognize only that an applicant proposing a feeder link Earth station has an obligation to address in its

^{23/} Comments at 65-66 and Appendix A at 4.

application conformance with the coordination agreements reached under § 25.278 by the LEO MSS system operator.

Finally, the reference to §§ 25.203(j) and (k) in § 25.114(c)(6)(iii) is inappropriate.^{24/} The space station information required under § 25.203(j) for Ka-band space station feeder link antennas using steerable, narrow beam antennas is better included as an additional item under § 25.114(c)(28), and there is no need to reference § 25.203(k) since this subsection (as proposed to be modified) is a requirement applicable only to Earth station applications. Consequently, rules would be simplified and clarified by the deletion of § 25.114(c)(6)(iii).

D. Interservice Sharing

Section 25.213 of the rules sets forth interservice sharing criteria and coordination procedures for the 1.6/2.4 GHz MSS.

With respect to § 25.213(a)(1) dealing with radio astronomy protection zones, Constellation made the following proposal:

(1) Protection zones. All 1.6/2.4 GHz Mobile-Satellite Service systems shall be capable of determining the position of the user transceivers accessing the space segment in the 1610.6-1613.8 MHz band through either internal radio determination calculations or external sources such as LORAN-C or the Global Positioning System. *****

Reason: There is no reason to require transceivers in the mobile-satellite service which do not operate in the radio astronomy band to incur the cost of including a position determination capability.

^{24/} Section 25.114(c)(6) deals with the definition of orbital configuration, and inclusion of feeder link frequencies under this section is confusing, as well as being duplicative, since feeder link frequencies have to be supplied under § 25.114(c)(5) as part of the radio frequency and polarization plan.

In rejecting this proposal, the Commission linked this proposal with the beacon actuated protection approach.^{25/} Actually, Constellation's proposal was not premised on the beacon actuation approach but on the Commission's L-band frequency assignment plan under which a large portion of CDMA user transmissions would be conducted on frequencies outside the radio astronomy band. In particular, Constellation's proposal was intended to allow the cost of some user transceivers to be reduced by restricting their operations to frequencies outside the radio astronomy bands and avoid the costs of including position determination circuitry in the user transceiver. This would be particularly important in the early days of operation when customer demand for service can be satisfied within the higher portion of the CDMA band above the radio astronomy bands, and GPS/LORAN circuit boards cost hundreds of dollars.^{26/} Constellation believes that the Commission should reconsider its position and adopt Constellation's proposal in order to avoid unnecessary costs to consumers.

Constellation also requests the Commission to reconsider § 25.213(a)(1)(iii), and to either eliminate this provision pending further technical review or provide the detailed

^{25/} Report and Order at ¶ 102.

^{26/} Constellation's 1991 application contemplated providing position determination to all subscribers since it was requesting an authorization in the radiodetermination-satellite service and since it appeared that knowledge of user position was needed for the centralized handover control envisioned at that time. Position determination is not a requirement of MSS, and Constellation no longer requires accurate position information for handover control.

technical justification for the protection distance afforded by this rule. In particular, this rule appears to be premised on providing radio astronomy sites the same level of interference from out-of-band emissions as it receives from co-channel interference. However, as Constellation pointed out in its comments:

ITU RR 344 provides that ' . . . protection from services in other bands shall be afforded the radio astronomy service only to the extent that such services are afforded protection from each other.'^{27/}

The out-of-band emission protection requirements claimed by radio astronomy are far more stringent than any such protection claimed by MSS. The Commission has not adequately considered the impact on MSS consumer use^{28/} but apparently simply accepted the proposal of the radio astronomy community for protection zones in another 2 MHz of CDMA spectrum without addressing the further operating constraints and cost impact on MSS transceivers, as well as the policy inconsistency with RR 344.

With respect to §§ 25.213(c) and (d), Constellation remains concerned that the retention of the last sentences of each of these Sections will cause ambiguity and difficulties in the course of coordinating 1.6/2.4 GHz MSS systems with other

^{27/} Comments at 48.

^{28/} The Commission's reliance on the claim of the National Research Counsel Committee on Radio Frequencies ("CORF") that only 1% of MSS use would be affected is misplaced since all MSS users would be affected by the additional cost of including position determination circuitry in the user transceiver. If in fact only 1% of consumer MSS use is affected, as claimed by CORF, then this MSS use would appear to fall below the 10% criteria for harmful interference in CCIR Recommendation 769.

services. Section 25.213(c) provides a clearly defined sharing criteria (i.e., either a -3 or -15 dB (W/4 kHz) EIRP density limit) for Earth stations operating in this band, just as is done in the subsections (a) and (b). As recognized by the Commission, additional limits or conditions may be agreed upon during the coordination process.^{29/} However, such limits or conditions resulting from coordination agreements are not specified in the Commission's rules.

However, Constellation continues to be concerned that the retention of the last sentence in § 25.213(c), and the last sentence in § 25.213(d) would cause continuing confusion as to the operating conditions on the 1.6/2.4 GHz MSS and would undercut the Commission's negotiating posture during the coordination process to achieve mutually acceptable operating agreements between co-primary services. The allocation table requirement on the 1.6/2.4 GHz MSS not causing harmful interference or claiming protection from interference remains in § 2.106 of the rules, and the coordination agreements reached for 1.6/2.4 GHz MSS systems would implement these requirements in practice. Such general allocation provisions are, therefore, inappropriate and unnecessary for service rules that govern day-to-day operations of a primary service, particularly since the Commission stated that 1.6/2.4 GHz MSS licenses would be subject to whatever limits or conditions are agreed upon during the

^{29/} Report and Order at ¶ 128.

coordination process.^{30/} Constellation does not believe the Commission should restrict its negotiating flexibility or impose the uncertainty that additional constraints might be imposed on 1.6/2.4 GHz MSS systems after coordination agreements are implemented in day-to-day operations that is implied by the current rule text.

Constellation continues to believe that § 25.213 should be limited to specific sharing criteria, such as those contained in subsections (a) and (b) and the first sentence in subsection (c). In the absence of any other reference to the Resolution 46 coordination procedures, Constellation agrees that § 25.213 is an appropriate place to indicate this requirement on the 1.6/2.4 GHz MSS. For these reasons, Constellation requests the Commission to reconsider the provisions of §§ 25.213(c) and (d) and revise them to read as follows:

(c) Protection of aeronautical radionavigation systems: Mobile-satellite earth stations transmitting in the 1610-1626.5 MHz band shall limit e.i.r.p. levels to no greater than -15 dB (W/4kHz) on frequencies being used by systems operating in accordance with international Radio Regulation RR 732, and to no greater than -3 dB (W/4kHz) on frequencies that are not so being used. ~~Pursuant to international RR 731E and RR 731F, respectively, all mobile satellite Earth to space operations in the 1610-1626.5 MHz Band and mobile satellite space to Earth operations in the 1613.8-1626.5 MHz band must be coordinated and notified under the procedures set forth in Resolution 46 (WARC 92).~~

^{30/} Report and Order at ¶ 128. Moreover, the Commission apparently accepts the NRM Report conclusion that fixed stations operating under RR 730 and ARNS ground stations operating under RR 732 will not cause harmful interference to the 1.6/2.4 GHz MSS and that the 1.6/2.4 GHz MSS will not cause harmful interference to these services, which renders the last sentence of § 25.213(d) moot. Id. at ¶ 160.

~~Such mobile satellite stations shall not cause harmful interference to, or claim protection from stations in the aeronautical radionavigation service and stations operating pursuant to international RR 732.~~

~~(d) Fixed stations operating pursuant to international Radio Regulation RR 730. International coordination procedures. Pursuant to international Radio regulations RR 731E, and RR 731F and RR 753F (see § 2.106 of this chapter), all mobile-satellite operations in the 1610-1626.5 MHz band (Earth-to-space transmissions), and all operations in the 1613.8-1626.5 MHz band (space-to-Earth transmissions), and all operations in the 2483.5-2500 MHz band (Earth-to-space transmissions), respectively, must be coordinated with systems operating pursuant to international RR 730 according to are subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC-92). All such mobile satellite stations shall not cause harmful interference to, or claim protection from, stations in the fixed service operating pursuant to international RR 730.~~

III. CONCLUSION

For the reasons set forth above, Constellation requests the Commission to reconsider the specific rules identified above governing the 1.6/2.4 GHz MSS, and adopt the modifications or clarifications proposed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that the foregoing "Petition For Reconsideration" was served by hand or first-class mail, postage prepaid, this 21st day of November, 1994, on the following persons:

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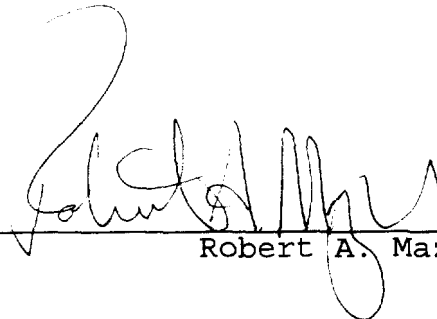
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